

Subpart 633.1—Protests

633.102 General.

All communications relative to protests filed with the General Accounting Office (GAO) or the General Services Administration Board of Contract Appeals (GSCBA) shall be coordinated with the Office of the Legal Adviser.

633.103 Protests to the agency.

For protests filed with the Department and received before award, the contracting office shall obtain the advice of the Office of the Legal Adviser before making the determination prescribed in FAR 33.103(a).

633.104 Protests to GAO.

(a) *General.* (1) Upon being telephonically advised by the GAO of the receipt of a protest, before or after award, the Office of the Legal Adviser shall inform the appropriate head of the contracting activity, who shall immediately notify the contracting officer. For protests concerning ADP acquisitions, the Office of the Legal Adviser shall also inform the Deputy Assistant Secretary for Information Management. After receiving a copy of the protest from GAO and its request for an administrative report, the Office of the Legal Adviser shall promptly provide the same to the head of the contracting activity involved, who shall promptly provide a copy to the contracting officer and request a written report in conformance with FAR 33.104(a)(2).

(2) In addition to the requirements in FAR 33.104(a)(2), the report responsive to the protest shall be appropriately titled and dated, shall cite the GAO file number, and shall be prepared and signed by the contracting officer. The contracting officer shall prepare the report with the assistance of the Office of the Legal Adviser. If appropriate, the report shall contain a statement regarding any urgency for the acquisition and the extent to which a delay in award may result in significant performance difficulties or additional expense to the Government. If award is not urgent, the report shall include an estimate of the length of time an award may be delayed without significant expense or difficulty in perform-

ance. The head of the contracting activity shall submit to the Office of the Legal Adviser an original and two complete copies of the contracting officer's report. The contracting officer shall provide one complete copy to each interested party who responded to GAO, to the contracting officer, or to the Office of the Legal Adviser pursuant to the notification prescribed in paragraph (a)(3) below. In submitting the report to GAO, the Office of the Legal Adviser shall identify all parties to whom the report has been furnished.

(3) As prescribed in FAR 33.104(a)(3) and 4 CFR 21.3, the contracting officer shall promptly notify all interested parties, including offerors (or the contractor if the protest is after award) involved in or affected by the protest, that a protest has been filed with the GAO and the basis for the protest. The contracting officer shall place a written record of such notifications in the contract file. The contracting officer shall promptly transmit by letter a copy of the protest to all interested parties previously notified and include a statement requiring furnishing of views and information directly to the GAO. The contracting officer shall send copies of such cover letters concurrently to the Office of the Legal Adviser. Cover letters shall contain a specified period of time for submission of comments, in accordance with FAR 33.104(a)(3), and include instructions that any comments submitted to the GAO should also be submitted simultaneously to the contracting officer and the Office of the Legal Adviser. Materials submitted by the protester may be withheld from interested parties in accordance with 4 CFR 21.3(b).

(4) All DOS personnel shall handle protests on a priority basis. If the specific circumstances of the protest require a longer period than allowed under FAR 33.104(a)(3), the head of the contracting activity shall immediately notify the Office of the Legal Adviser, which shall prepare a written request for extension of the period in accordance with 4 CFR 21.3(d). The head of the contracting activity shall deliver the protest report to the Office of the Legal Adviser within 15 work days from the date of telephonic notification by the Office of the Legal Adviser.

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For reports involving use of the 10 work day express option provided at FAR 33.104(a)(4), the Office of the Legal Adviser shall establish the report delivery date after consultation with the head of the contracting activity.

(b) *Protests before award.* If a protest before award has been filed with GAO and the contracting officer determines in writing that it is necessary to make award under the circumstances prescribed in FAR 33.104(b)(1), the contracting officer shall first obtain advice from the Office of the legal Adviser. The contracting officer shall submit the written determination to the head of the contracting activity for approval.

(f) *Notice to GAO.* The authority to submit the report prescribed in FAR 33.104(f) is delegated, without power of redelegation, to the head of the contracting activity. The report shall be submitted to the Comptroller General through the Office of the Legal Adviser.

[53 FR 26173, July 11, 1988, as amended at 59 FR 66764, Dec. 28, 1994]

633.105 Protests to GSBICA.

(a) Upon receipt of a copy of a protest to GSBICA, the contracting officer or the official designated in the solicitation shall immediately notify the Office of the Legal Adviser and the Deputy Assistant Secretary for Information Management. The contracting officer is responsible for compliance with the requirements in FAR 33.105(a)(2). The contracting officer shall include in the contract file a record of such notifications to all parties and related correspondence with GSBICA. The contracting officer shall provide to the Office of the Legal Adviser a copy of the list of interested parties notified, simultaneously with submission of the list to the GSBICA.

(b) The contracting officer shall submit to the Office of the Legal Adviser an original and two copies of the protest file, documented in conformance with FAR 33.105(b), within 8 work days after the filing of a protest. The contracting officer also shall provide a complete copy of the file to the protester and all other interested parties within 10 work days after filing of the protest. The protest file shall be orga-

nized to comply with the requirements of Rule 4(b) of the GSBICA Rules of Procedure (48 CFR Ch. 61). The Office of the Legal Adviser shall then submit the file to the GSBICA within 10 work days after filing of the protest.

(c) The Office of the Legal Adviser shall represent the contracting officer at any hearing on suspension of the agency's delegation of procurement authority or at any hearing on the merits of the protest. The Office of the Legal Adviser shall notify the contracting officer and the Deputy Assistant Secretary for Information Management of the results of any hearing.

(d) The authority to execute the determination and findings (D&F) prescribed in FAR 33.105(d)(2) is delegated, without power of redelegation, to the head of the contracting activity.

[53 FR 26173, July 11, 1988, as amended at 59 FR 66764, Dec. 28, 1994]

Subpart 633.2—Disputes and Appeals

633.203 Applicability.

The Procurement Executive is the agency head for the purposes of FAR 33.203(b).

633.211 Contracting officer's decision.

(a) In the second sentence of FAR 33.211(a)(4)(v), contracting officers shall replace "the Board of Contract Appeals" with "Armed Services Board of Contract Appeals, Skyline 6, 5109 Leesburg Pike, Falls Church, VA 22041."

(b) Prior to issuing a contracting officer's final decision, the contracting officer shall obtain assistance, as appropriate, from the Office of the Legal Adviser.

633.214-70 Alternative dispute resolution.

(a) *Policy.* The Department's goal is to resolve contract disputes before the issuance of a contracting officer's final decision under the Contract Disputes Act. Contracting officers shall consider all possible means of reaching a negotiated settlement, consistent with the Government's best interests, before issuing a final decision on a contractor claim under the process outlined in FAR 33.206 through 33.211.